In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 365

CHARLES MYRON MOORE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the United States District Court for the Eastern District of Missouri on all counts of a three-count indictment, each of which charged the passing of a counterfeit ten dollar bill in violation of 18 U.S.C. 472. He was sentenced to imprisonment for five years on each count, the sentences to run concurrently. The court of appeals affirmed in an opinion (Pet. App. A), reported at 375 F.2d 877, which extensively reviews the evidence.

The sole issue raised is that the judge erred in the following portion of his charge, to which no exception was taken at the trial (R. 127-128):

> It is reasonable to infer that a person ordinarily intends the natural and probable consequences of acts knowingly done or knowingly omitted. So unless the contrary appears from the evidence, the jury may draw the inference that the accused intended all the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly done or knowingly omitted by the accused.

This sentence appears in the section of the charge dealing with the element of "intent to defraud." The judge had previously charged the jury that the defendant (who had taken the stand) claimed that he did not know the currency was counterfeit, and that if the jury were not "convinced beyond a reasonable doubt that the defendant knew of the counterfeit character of the United States currency mentioned in the evidence, it was their sworn duty "to find the defendant not guilty and acquit the defendant" (R. 126). He had also charged that "in order to find this defendant guilty, you must not only believe that he did the acts complained of, and of which he stands charged, but you must also believe that the acts were intentional and knowingly done by the defendant." He defined "knowingly" as meaning that "state of mind wherein a defendant was in possession of facts which he knew, or was aware that he could not legally do or fail to do the acts whereon he here stands charged" (R. 126-127).

The portion of the charge complained of merely told the jury that, if defendant was aware that the money he was passing was counterfeit, it could be inferred that he intended to defraud. Obviously, there is nothing improper about such an inference. Since the jury was expressly told that, if defendant did not know that the money was counterfeit it was their sworn duty to acquit him, there was no error, much less plain error, in the charge.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
Attorney.

AUGUST 1967.

---

[1] Petitioner has misinterpreted the decisions on which he relies. The charge that it may be presumed or inferred that a person intended the natural and probable consequences of acts which he knowingly commits has been questioned in cases where the act is intrinsically ambiguous—as for example failure to file or filing an understated income tax return, which may be attributable to negligence or ignorance rather than a conscious intent to evade. *Mann* v. *United States*, 319 F. 2d 404 (C.A. 5), certiorari denied, 375 U.S. 986; *Berkovitz* v. *United States*, 213 F. 2d 468 (C.A. 5); *Bloch* v. *United States*, 221 F. 2d 786 (C.A. 9). But there is no ambiguity in knowingly passing counterfeit money in purchasing merchandise.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 272062 110